IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE
MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 1885 of 2007(Y)

PETITIONER:

N.S. VIJAYAN, NADUVATH HOUSE,
VADAYAMPADY P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)
SRI.THOMAS GEORGE

RESPONDENTS:
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1. THE COCHIN DEVASWOM BOARD,
REPRESENTED BY ITS PRESIDENT,
THRISSUR.

2. ASSISTANT COMMISSIONER
COCHIN DEVASWOM BOARD, TRIPPUNITHURA GROUP,
TRIPPUNITHURA.

3. DEVASWOM OFFICER, COCHIN DEVASWOM,
THRIPUNITHURA TEMPLE, THIRUPPUNITHURA.

BY ADV. SRI.M.RAMESH CHANDER, SC, CDB

BY SENIOR GOVERNMENT PLEADER SRI. P.K. BABU.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P(C).No.1855 of 2007

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Dated this the 21st day of May, 2009

J U D G M E N T

The petitioners are lecturers in different colleges. In respect of the salary arrears received by them pertaining to the assessment years 1996-97 to 2003-04, in their returns, the petitioners claimed relief under Section 89 of the Income Tax Act. That relief was denied by the assessing authority. Against the order of the assessing officer, the petitioners filed appeals before the 4th respondent and the 4th respondent-appellate authority, following a decision of the Income Tax Appellate Tribunal, Madras Bench, allowed the appeals. One of such order is produced as Ext.P1. In view of the appellate order, the petitioners claimed refund of the income tax they have already paid and the amounts were refunded to the petitioners. Thereafter, purportedly under Section 147 of the Income Tax Act, the petitioners were served with Exts.P3 to P8 proceedings reopening the income tax assessment of the petitioners in the light of a later decision of this Court on the same point. The petitioners are challenging Exts.P3 to P8 orders in this writ petition.

2. The learned standing counsel appearing for the Income Tax Department would contend that change of law on account of decisions of court is certainly a ground for reopening of an assessment under

Section 147, which only has been done in this case. He therefore, seeks to support Exts.P3 to P8.

I am not going into the question as to whether subsequent decision of the higher courts is a ground for reopening of an assessment under S.147, in so far as in this case the assessment order had already merged with the appellate order, which has become final. Therefore, without the Department challenging the appellate order appropriately, the assessment order which has merged with the appellate order could not have been reopened invoking Section 147 of the Income Tax Act. That being so, Exts.P3 to P8 are clearly unsustainable. Accordingly, they are quashed and the writ petition is allowed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

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P.A. to Judge